

1 DAVID A. ROSENFELD, Bar Number 058163  
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2 A Professional Corporation  
1001 Marina Village Parkway, Suite 200  
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Telephone 510.337.1001  
4 Fax 510.337.1023

5 ADMONISHEE

6 UNITED STATES OF AMERICA  
7 NATIONAL LABOR RELATIONS BOARD  
8 REGION 16

9 UNITED FOOD AND COMMERCIAL  
10 WORKERS LOCALS 951, 7 AND 1036, et al.

) Case No. 16-CB-3850

11 Respondents,

) **MOTION TO RESCIND**  
) **FEBRUARY 17, 1998**  
) **ADMONITION**

12 and

13 MEIJER, INC.

14 Charging Party.  
15

16 This is a re-filing of the Motion to Rescind which was originally filed on July 8, 2011. A  
17 copy of that Motion is attached as Exhibit A. The Motion seeks rescission of a February 17, 1998  
18 Admonition. The Board issued its order through the Associate Executive Secretary on May 16,  
19 2012 denying the Motion.

20 The Associate Executive Secretary, apparently at the direction of the Board, issued an  
21 Order on February 17, 1998, admonishing the undersigned that, "any future filings in any matter in  
22 which he addresses the [n]ational [r]ight to [w]ork [l]egal [d]efense [f]oundation or its counsel or  
23 any party in this or a similar inappropriate manner risk rejection pursuant to Section 102.114(a) of  
24 the Board's Rules and Regulations.[sic]" Because of the ancient history of this Order, a copy was  
25 attached for the Board's convenience as Exhibit A to the original Motion.

26 The undersigned has complied with that direction and has not referred to the national right  
27 to work legal defense foundation or its counsel by any scurrilous or otherwise highly offensive  
28

1 language in any filings. He certainly referred to them as many things publicly and otherwise, but  
2 has not used such statements as the “National Right to Shirk Legal Defense Foundation” or any  
3 other variation of that in filing with the Board. He did use a similar phrase on an unfair labor  
4 practice charge filed with the Region on one occasion. In that case the group was representing a  
5 purported labor organization. See Case 20-CB-12840.

6 The Board at the time that it denied the motion in 2012 may have been improperly  
7 constituted under the *Noel Canning* theory. The Moving party doesn’t care to address that issue  
8 but believes the new Board which is properly constituted should address this issue

9 We therefore ask that the Board rescind the 1998 Admonition which is now more than 15  
10 years old.

11 We recognize that someone from the national right to work group may file a response  
12 asserting that the undersigned has improperly referred to the organization. Nothing that the  
13 undersigned has done violated the admonition. Nothing prohibited the undersigned from referring  
14 to Mr. Taubman or his organization by any other language so long as it wasn’t a filing with the  
15 Board. Indeed, any such restriction would be a serious infringement on the undersigned’s First  
16 Amendment rights. Indeed such a restriction would be unlawful under Section 7 if the employee  
17 under the Act made the same references to Mr. Taubman and his organization. See *Plaza Auto*  
18 *Center*, 360 NLRB No. 117 (2014). This Admonition violates Section 7 because it prohibits the  
19 undersigned as counsel for employees within the meaning of the Act or as counsel to labor  
20 organizations from speaking freely and truthfully about the right to work group. We note in this  
21 regard that this phrase “right to work” is a misrepresentation of its purposes.

22 The Supreme Court in recent decisions has made it plain that the First Amendment protects  
23 such references. If pickets can have such opprobrious language as the Supreme Court found  
24 protected in *Snyder v. Phelps*, 562 U.S. \_\_\_\_ (2011) this organization can endure similar terms.  
25 Moreover Admonition interferes with the right to petition as protected by the Court in *BE&K*  
26 *Construction v. NLRB*, 536 U.S. 516 (2002).

27 The Admonition itself is ungrammatical and unintelligible. It states “its counsel or any  
28 party in this or a similar inappropriate manner risk rejection.” There is something missing from

1 the text.

2 Finally this is entirely vague. The phrase "similar inappropriate manner" is not capable of  
3 definition.

4 Because of the passage of time, the other infirmities with the Admonition and the fact that  
5 the undersigned has complied with that direction in terms of any filings with this Agency, the  
6 Order of February 17, 1998 should be rescinded.

7 Dated: September 18, 2014

8 WEINBERG, ROGER & ROSENFELD  
9 A Professional Corporation

10 By:   
11 DAVID A. ROSENFELD  
12 Admonishee

13 106797/729797

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1 **CERTIFICATE OF SERVICE**

2 I am an employee in the County of Alameda, State of California. I am over the age of  
3 eighteen years, and not a party to the within action. My business address is 1001 Marina Village  
4 Parkway, Suite 200, Alameda, CA 94501. On September 18, 2014, I served upon the following  
5 parties in this action:

6 Mr. Richard F. Griffin, Jr.  
7 Office of Appeals, NLRB  
8 Office of the General Counsel  
9 1099 - 14th Street, N.W.  
10 Washington, DC 20570-0001  
11 (202) 273-4266 Fax

National Labor Relations Board, Region 16  
Federal Office Building  
819 Taylor Street, Room 8A24,  
Fort Worth, TX 76102

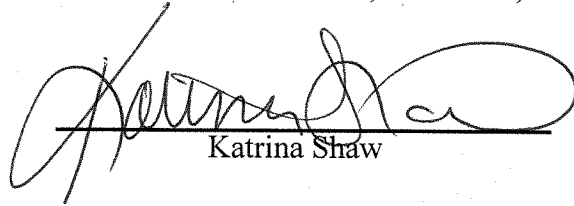
12 Glenn Taubman  
13 8001 Braddock Road, Suite 600  
14 Springfield, VA 22160

15 copies of the document(s) described as:

16 **MOTION TO RESCIND FEBRUARY 17, 1998 ADMONITION**

17 [x] **BY MAIL** I placed a true copy of each document listed herein in a sealed envelope,  
18 addressed as indicated herein, and caused each such envelope, with postage thereon fully  
19 prepaid, to be placed in the United States mail at Oakland, California. I am readily familiar  
20 with the practice of Weinberg, Roger & Rosenfeld for collection and processing of  
21 correspondence for mailing, said practice being that in the ordinary course of business, mail  
22 is deposited in the United States Postal Service the same day as it is placed for collection.

23 I certify that the above is true and correct. Executed at Oakland, California, on September  
24 18, 2014.

25   
Katrina Shaw

1 DAVID A. ROSENFELD, Bar Number 058163  
2 WEINBERG, ROGER & ROSENFELD  
3 A Professional Corporation  
4 1001 Marina Village Parkway, Suite 200  
5 Alameda, California 94501  
6 Telephone 510.337.1001  
7 Fax 510.337.1023

8 Attorneys for Respondent  
9 UNITED FOOD AND COMMERCIAL  
10 WORKERS LOCAL 1036

11 UNITED STATES OF AMERICA  
12 NATIONAL LABOR RELATIONS BOARD  
13 REGION 16

14 UNITED FOOD AND COMMERCIAL	) Case No.	16-CB-3850
15 WORKERS LOCALS 951, 7 AND 1036, et al.	)	
16 Respondents,	)	
17 and	)	
18 MEIJER, INC.	)	
19 Charging Party.	)	
20 <b>MOTION TO RESCIND FEBRUARY</b>		
21 <b>17, 1998 ADMONITION</b>		

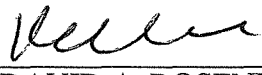
22 The Associate Executive Secretary, apparently at the direction of the Board, issued an  
23 Order on February 17, 1998 in the above-entitled matter, admonishing the undersigned that, "any  
24 future filings in any matter in which he addresses the National Right to Work Legal Defense  
25 Foundation or its counsel or any party in this or a similar inappropriate manner risk rejection  
26 pursuant to Section 102.114(a) of the Board's Rules and Regulations." Because of the ancient  
27 history of this Order, a copy is attached for the Board's convenience as Exhibit A.

28 The undersigned has complied with that direction and has not referred to the National Right  
to Work Legal Defense Foundation or its counsel by those terms in any filings. He may have  
referred to them as many things publicly and otherwise, but has not used such statements as the  
"National Right to Shirk Legal Defense Foundation" or any other variation of that in filing with the  
Board.

1 Because of the passage of time and the fact that the undersigned has complied with that  
2 direction in terms of any filings with this agency, the Order of February 17, 1998 should be  
3 revoked.

4 Dated: July 8, 2011

WEINBERG, ROGER & ROSENFELD  
A Professional Corporation

6  
7 By:   
8 DAVID A. ROSENFELD  
9 Attorneys for Respondent  
10 UNITED FOOD AND COMMERCIAL  
11 WORKERS LOCAL 1036

12 106797/626205

**CERTIFICATE OF SERVICE**

I am an employee in the County of Alameda, State of California. I am over the age of eighteen years, and not a party to the within action. My business address is 1001 Marina Village Parkway, Suite 200, Alameda, CA 94501. On July 8, 2011, I served upon the following parties in this action:

Robert E. Funk, Jr.  
Nicholas Clark  
United Food & Commercial Workers  
International Union, AFL-CIO & CLC  
1775 K Street, N.W.  
Washington, DC 20006

Glenn Taubman  
8001 Braddock Road, Suite 600  
Springfield, VA 22160

Lafe Solomon  
Acting General Counsel  
NLRB  
1099 - 14th Street, N.W.  
Washington, DC 20570-0001

Jonathan D. Karmel  
Karmel & Gilden  
221 North LaSalle, Suite 1414  
Chicago, IL 60601

Charles Orlove  
Jacobs, Burns, Orlove, Stanton &  
Hernandez  
122 S. Michigan Ave., Suite 1720  
Chicago, IL 60603

Ted Iorio  
Kalniz, Iorio & Feldstein Co CPA  
550 W Central Avenue  
Toldeo, OH 43615

James Coppess  
Associate General Counsel  
AFL-CIO, Legal Department  
815 Sixteenth Street, N.W.  
Washington,, DC 20006


National Labor Relations Board, Region 16  
Federal Office Building  
819 Taylor Street, Room 8A24,  
Fort Worth, TX 76102

copies of the document(s) described as:

**MOTION TO RESCIND FEBRUARY 17, 1998 ADMONITION**

**[x] BY MAIL** I placed a true copy of each document listed herein in a sealed envelope, addressed as indicated herein, and caused each such envelope, with postage thereon fully prepaid, to be placed in the United States mail at Oakland, California. I am readily familiar with the practice of Weinberg, Roger & Rosenfeld for collection and processing of correspondence for mailing, said practice being that in the ordinary course of business, mail is deposited in the United States Postal Service the same day as it is placed for collection.

I certify that the above is true and correct. Executed at Oakland, California, on July 8, 2011.

  
\_\_\_\_\_  
Joanna Son



**UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
1099 14th Street, N.W.  
Washington, D.C. 20570-0001**

**February 17, 1998**

**RE: UNITED FOOD AND COMMERCIAL WORKERS LOCALS 951, 1036 AND  
7 (MEIJER, INC.) CASE 16-CB-3850, ET AL.**

**The May 14, 1997 Motion of Glenn Hilton to strike the Cross-Exceptions and Answering Brief filed by UFCW Local 1036 is denied. Although it appears that Mr. Hilton's attorney was not initially served with Respondent Local 1036's Cross-Exceptions and Answering Brief and although Respondent's Counsel, David A. Rosenfeld, did not promptly attempt to re-serve these documents when requested by Mr. Hilton's attorney, the documents were provided on or about May 15, 1997 and Charging Party's counsel filed a timely response. Accordingly the Motion is moot.**

**In the certificate of service of his April 23, 1997 Exceptions; in his May 15, 1997 correspondence to Mr. Hilton's attorney, a courtesy copy of which was sent to the Board's Executive Secretary; in the certificate of service of his May 19, 1997 Response to the Motion to Strike; and in other filings of record and documents; Mr. Rosenfeld continuously refers to the National Right to Work Legal Defense Foundation, Inc., as either the "Right to Freeload Committee", "The National Right to Shirk Legal Defense Foundation" or variations thereon, and to the employees of this organization including Charging Party Hilton's Attorney as "Shirkers." Employing such offensive epithets in addresses on documents served on an opposing counsel in a Board proceeding is inappropriate and manifests disrespect for the Board's processes as well as for opposing counsel.**

**Accordingly, Mr. Rosenfeld is admonished that any future filings in any matter in which he addresses the National Right to Work Legal Defense Foundation or its counsel or any party in this or a similar inappropriate manner risk rejection pursuant to Section 102.114(a) of the Board's Rules and Regulations.**

**EXHIBIT A**



**By direction of the Board:**

**(Chairman Gould would limit the decision to the determination that the Motion to Strike is moot. Member Hurtgen, in addition to the foregoing decisions on the Motion to Strike and the admonishment, would refer the matter to an Investigating Officer pursuant to Section 102.177(e) of the Board's Rules and Regulations.)**

**Richard D. Hardick  
Associate Executive Secretary**

**cc: Parties**